IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.972 OF 2005

Shri Rangnath Dattu Dawri .. ..Appellant
Versus
Shri Subrao Vithu Shelke-Jagtap & Ors. ..Respondents

Mr.N.V.Gangal for appellant

CORAM : P.V.KAKADE, J.

DATE : 5TH SEPTEMBER, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Addl. District Judge, Sangli dated 28.10.2004 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Kavathe-Mahakal dated 24.8.2000 dismissing the plaintiff’s suit for possession of the property on the ground of ownership title.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintiff filed the suit for possession of the suit property on the ground that the property was

ancestral property and he had share in the suit property by virtue of his ownership title. The defendant no.1 contested the suit and came with the case that he is a tenant in the suit land as well as the Well located in the suit land and as such sought dismissal of the suit.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had failed to prove his title to the suit property and also failed to prove that the defendant nos.1 and 2 had illegally disposed him from the property. On the other hand it was proved that the defendant no.1 was a tenant in the suit property and was holding thereof by virtue of tenancy rights and as such the suit came to be dismissed, though the land was held to be ancestral property of plaintiff and the defendants. The appeal was carried to the District Court. The learned Addl.District Judge after hearing both the parties concurred with the findings recorded by the lower court and dismissed the appeal. Hence the present appeal.

4. At the outset it must be noted that there is absolutely no substantial question of law involved in this appeal. The learned counsel for the appellant

vehemently urged that since both the courts have come to the conclusion that in the property he had right of his 1/2 share therein through his father and therefore, the finding to the effect that the plaintiff had no title was wrong. In this regard it must be noted that on perusal of judgments of both the courts below they have properly appreciated the evidence on record and have recorded findings correctly and properly. It is not in dispute that in Revenue proceeding, the Tahsildar found that the defendant no.1 was tenant in the suit property and the matter was confirmed upto the High Court and therefore, finding recorded by Tahsildar regarding defendant no.1’s tenancy right of the suit property has become final. If this is a position then the plaintiff cannot claim for any 1/2 share either in the tenanted property or in the suit well located in the suit land, as submitted, and as such I am of the view that the plaintiff has no case at all. It is also to be noted that this is not a suit for partition, but it is a suit for possession simplicitor and therefore, the plaintiff cannot succeed in this suit for possession simplicitor on the basis of title inspite of the fact that the property is held to be ancestral property.

. In the result the appeal stands dismissed.